

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HERNAN O'RYAN CASTRO,

Petitioner,

No. C 07-5775 PJH (PR)

vs.

ORDER TO SHOW CAUSE

ROBERT E. McFADDEN, Warden,

Respondent.

Petitioner, a federal prisoner currently living at a half-way house in San Francisco, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He has paid the filing fee.

DISCUSSION

A. Standard of Review

A district court may entertain a petition for a writ of habeas corpus challenging the execution of a federal sentence only on the ground that the sentence is being executed "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). The court should "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

B. Legal Claims

Federal law requires that participants in certain half-way house programs, such as the one petitioner is in, pay part of the cost. Petitioner plausibly contends that under the terms of applicable statutes and regulations the requirement does not apply to him. He

1 says that he nevertheless was forced to sign an agreement to pay part of the costs on pain
2 of not being allowed to participate in the program, something which would cause him to be
3 returned to prison and which would affect the length of his incarceration. This claim is
4 sufficient to require a response.

5 **CONCLUSION**

6 For the foregoing reasons and for good cause shown,


7 1. The clerk shall serve by certified mail a copy of this order and the petition and all
8 attachments thereto upon the respondent and the respondent's attorney, the United States
9 Attorney for the Northern District of California. The clerk shall also send a copy of the
10 petition to the Attorney General of the United States in Washington, D.C. The clerk shall
11 also serve a copy of this order on the petitioner.

12 2. Respondent shall file with this court and serve upon the petitioner, within thirty
13 days of the date this order is entered, an answer responding to the allegations of the
14 petition and showing cause why a writ of habeas corpus should not be issued. The
15 respondent shall file with the answer a copy of all documents that are relevant to a
16 determination of the issues presented by the petition.

17 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse
18 with the court and serving it upon the respondent within thirty days of service of the answer.

19
20 **IT IS SO ORDERED.**

21 Dated: November 20, 2007.



PHYLLIS J. HAMILTON
United States District Judge